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IRVINE CA 92612-7108

In re Application of	:	
BEBBINGTON et al.	:	
Application No.: 10/585,149	:	DECISION
PCT No.: PCT/US2004/043830	:	
Int. Filing Date: 30 December 2004	:	
Priority Date: 31 December 2003	:	
Attorney's Docket No.: 073678-0026	:	
For: TRANSACTIVATION SYSTEM FOR	:	
MAMMALIAN CELLS	:	

This decision is in response to applicants' "REQUEST FOR RECONSIDERATION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", "RENEWAL OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT", which was accompanied by, *inter alia*, a master docket report showing all docketed due dates for all USPTO replies received at the correspondence address during the time period March 26, 2007 to June 26, 2007, "Renewal of Petition to Revive for Unavoidable Abandonment", and "Petition to Revive for Unintentional Abandonment", all filed 18 September 2008.

### **BACKGROUND**

On 30 December 2004, applicants filed international application PCT/US2004/04380, which designated the United States and claimed a priority date of 31 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2006

On 30 June 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 26 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905).

On 27 March 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to timely respond to the Notification mailed 26 March 2007.

On 17 April 2008, applicants submitted a "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT."

On 25 August 2008, applicants submitted a "SUPPLEMENTAL FILING IN SUPPORT OF PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT," which was accompanied by, *inter alia*, an incoming mail log for the law firm of petitioner.

On 02 September 2008, a decision was mailed properly treating the submissions filed 17 April 2008 and 25 August 2008 as a single petition under 37 CFR 1.181 and a request, in the alternative, that the petition be considered a petition to revive under 37 CFR 1.137(a). The petition under 37 CFR 1.181 was dismissed without prejudice for failing to provide a proper docket report. The petition under 37 CFR 1.137(a) was also dismissed without prejudice.

On 18 September 2008, applicants filed the instant submission.

### DISCUSSION

#### Petition Under 37 CFR 1.181

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As noted in the decision mailed 02 September 2008, items (1) and (2) have been met.

Item (3) has now been met as well. The copy of the docket record mentioned above is sufficient.

#### Petition Under 37 CFR 1.137(a)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(a) is moot.

Petition Under 37 CFR 1.137(b)

Because the petition under 37 CFR 1.181 has been granted, the petition under 37 CFR 1.137(b) is moot.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 26 March 2007 is **VACATED**.

For the reasons set forth above, the NOTIFICATION OF ABANDONMENT mailed 27 March 2008 is **VACATED**.

For the reasons set forth above, the petition under 37 CFR 1.137(a) is **DISMISSED** as **MOOT**.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is **DISMISSED** as **MOOT**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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